

THE HONORABLE ROBERT J. BRYAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

SETH MCCLANAHAN,

Plaintiff,

v.

FOREMOST CORPORATION OF
AMERICA,

Defendant.

No. 3:19-cv-05263-RJB

STIPULATED MOTION AND ORDER
REGARDING THE MANAGEMENT
AND USE OF CONFIDENTIAL
MATERIALS

Note on Motion Calendar:

January 14, 2020

Pursuant to Federal Rule of Civil Procedure 26 and Local Civil Rule 26(c) of the Western District of Washington, the parties to this action (together “Parties” or individually a “Party”), through their undersigned counsel of record, hereby stipulate and agree to entry of this Stipulated Protective Order and Confidentiality Agreement (“Order”).

The Parties recognize that it is likely that non-public, confidential and/or trade sensitive business information may be produced in discovery and/or utilized as evidence in this matter, including information regarding, *inter alia*, one or more Parties’ internal operations, processes, procedures, sensitive personal data (social security and similar identifying information), financial information, including financial information regarding Plaintiff’s competitors, and other sensitive or confidential information related to the Parties’ respective operations (collectively “Protected Information”). The Parties agree that such Protected Information may contain information of a confidential, proprietary, and/or commercially sensitive nature, and that any

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1 unauthorized release of the Protected Information could cause harm to one or more of the Parties
 2 to this lawsuit and/or other business partners of one or more Parties. The Parties desire to
 3 exchange this information for purposes of this action, but agree to maintain its confidentiality, to
 4 not distribute or otherwise communicate such information to any person outside of this lawsuit,
 5 and to use it for no other purposes, except as permitted herein.

6 The parties acknowledge that this agreement is consistent with Local Civil Rule 26(c). It
 7 does not confer blanket protection on all disclosures or responses to discovery, the protection it
 8 affords from public disclosure and use extends only to the limited information or items that are
 9 entitled to confidential treatment under the applicable legal principles, and it does not
 10 presumptively entitle parties to file confidential information under seal. The Parties therefore
 11 have executed this stipulation and request the Court to enter the attached protective order under
 12 Federal Rule of Civil Procedure 26 and Local Civil Rule 26(c)(2).

13 **STIPULATION**

14 Therefore, to effectuate their agreement, the Parties stipulate to the following:

15 1. **Confidential Designation.** As set forth below, such Protected Information may
 16 be designated by any Party as Protected Information by marking it “Confidential” or
 17 “Confidential – Attorney’s Eyes Only” or by identifying it as “Confidential” or “Confidential –
 18 Attorney’s Eyes Only” in a written communication.

19 2. **Information Received in Response to Subpoenas to Third Parties.** During the
 20 course of this litigation, the Parties may serve subpoenas to other individuals or entities not
 21 parties to the litigation (“Third Parties”) to request potentially relevant documents. Pursuant to
 22 this Order, any Party, and any third party producing documents responsive to a subpoena, may,
 23 at any time mark as “Confidential” information received from a third party in response to a
 24 subpoena, or may request a written communication at any time that such information be
 25 designated as “Confidential.” Each Party agrees that it will not use any Protected Information
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1 received in response to a subpoena and designated as “Confidential” in any way to solicit the
2 insurance business of a current customer, insureds, or policy holder of any other Party.

3 **3. Depositions.** At the request of any Party, the original and all copies of any
4 deposition transcript, in whole or in part, may be designated as “Confidential” or “Confidential –
5 Attorney’s Eyes Only.”

6 (a) At any time during the deposition, at the request of any Party, the deposition
7 transcript or a portion thereof shall be marked by the reporter with “Confidential”
8 or “Confidential – Attorney’s Eyes Only” designation. Any portions so
9 designated shall thereafter be treated in accordance with the terms of this Order.

10 (b) Any Party may designate a deposition transcript or a portion thereof with the
11 appropriate “Confidential” or “Confidential – Attorney’s Eyes Only” designation
12 within 14 days after first receiving a formal copy of the same transcript from the
13 deposition reporter and informing all other Parties in writing.

14 **4. Other Material.** All Protected Information not reduced to documentary, tangible
15 or physical form or that cannot be conveniently designated as set forth herein shall be designated
16 by the producing Party by informing the receiving Parties of the designation in writing.

17 **5. Security.** The recipient of any Protected Information provided under this Order
18 shall maintain such material in a secure and safe area and shall exercise the same standard of
19 care with respect to the storage, custody, use and/or dissemination of such information as is
20 exercised by the recipient with respect to its own Protected Information. Protected Information
21 shall not be copied, reproduced, summarized, extracted or abstracted, except to the extent that
22 such uses are reasonably necessary for the conduct of this lawsuit. Any copies, reproductions,
23 summarizations, extractions, and abstractions shall be subject to the terms of this Order and
24 labeled as “Confidential” or “Confidential – Attorney’s Eyes Only” depending on the producing
25 party’s designation.
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1 **6. Disclosure of Information Designated “Confidential” to Persons Involved in**
2 **Litigation.** The Parties agree that the Parties and counsel (including in-house and outside
3 counsel), may have access to Protected Information designated as “Confidential” and shall not
4 disclose Protected Information designated as “Confidential,” except as otherwise provided
5 herein, to any person other than:

- 6 (a) The Court and any persons employed by the Court whose duties require access to
7 any materials filed in connection with this action;
- 8 (b) Legal counsel for any Party in this action, their legal associates, paralegals,
9 clerical and other support staff assisting in the representation of the Party to this
10 action;
- 11 (c) Actual witnesses and potential witnesses in this action, and their counsel, to the
12 extent reasonably deemed necessary by counsel for the witness’s preparation for
13 testimony, and only upon agreement to be bound by this Order as specified below;
- 14 (d) Outside consultants and experts (and their employees) retained for the purpose of
15 assisting in the prosecution and/or defense of this action, and only upon
16 agreement to be bound by this Order as specified below;
- 17 (e) Court reporters;
- 18 (f) Employees of copying and/or microfilming services utilized with respect to this
19 action for the prosecution or defense thereof; and
- 20 (g) Any other person, upon prior written consent of the Party who produced the
21 information.

22 **7. Disclosure of Information Designated “Confidential – Attorney’s Eyes Only.”**
23 Except as permitted by further order of this Court or by subsequent written agreement of the
24 designating Party, information designated “Confidential-Attorneys’ Eyes Only” may only be
25 disclosed to the following persons:
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- (a) The Parties' outside counsel of record, or otherwise specifically identified outside counsel, and associate attorneys and paralegal and clerical employees or similar persons assisting such counsel and not employed or otherwise retained by any Party;
- (b) This Court, court reporters and other similarly situated persons under an obligation as a matter of law to abide by the terms of this Order;
- (c) Outside consultants or experts retained by the parties to consult or testify in the case who are not directly employed by any Party or under contract with any Party for any purpose other than this case, and who are not competitors of any Party or employed by a competitor of any party, and provided that before any such disclosure, such individuals sign an agreement to be bound by the provisions of this Order; and
- (d) Any person who has already legally received and maintains possession of such confidential information, including the author, drafter and recipient of a document.

8. **Certification of Third Parties.** The Parties' counsel shall require all persons, except those referred to in paragraph 6(a), (b), (e) and (f) and paragraph 7(a), (b) and (d), before being given access to Protected Information, to read and agree to be bound by this Order by endorsing the following certification on a copy of this Order, which shall be retained by counsel:

I certify that I have received and read a copy of the protective order entered in *McClanahan v. Foremost Corporation of America*, Case No. 3:19-cv-05263-RJB (W.D. Wash.), and that I agree to be bound by the protective order. I understand that if I violate the protective order, I may be subject to contempt proceedings. I further understand that information designated as "Confidential" or "Confidential-Attorneys' Eyes Only" or protected in this case, and any notes, memoranda or other form of information derived from it, may not be used, copied or disclosed by me to anyone else except in strict accordance with the protective order and then only for the prosecution and defense of this litigation.

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1 Notwithstanding the above, a Party's counsel need not obtain such certification prior to
 2 disclosing Protected Information to another Party's present employees or agents during a
 3 deposition. In addition, no certification obtained from any person shall apply to information
 4 obtained by or made available to any such person by means other than the discovery provisions
 5 of the Federal Rules of Civil Procedure or the Local Rules of the Western District of
 6 Washington. If such person refuses to be bound by the terms of this Order, no Protected
 7 Information shall be disclosed to such person.

8 9. **Filing of Protected Information.** Nothing in this Stipulated Protective Order: (a)
 9 governs the manner of filing documents with the Court; (b) constitutes an admission that specific
 10 information is "Confidential" or "Confidential – Attorney's Eyes Only"; or (c) prejudices any
 11 Party from requesting an order governing or limiting the manner of filing documents with the
 12 Court. The Parties agree to comply with Local Rule 5 of the Western District of Washington
 13 should a Party ever have to file documents with the Court that has been designated
 14 "Confidential" or "Confidential – Attorney's Eyes Only," including the requirement to meet and
 15 confer before a Party moves to have the Protected Information filed under seal.

16 10. **Inadvertent Disclosure.** The Parties acknowledge that, despite each Party's best
 17 efforts to conduct a thorough pre-production review of all documents and discoverable
 18 electronically stored information ("ESI"), documents and/or ESI (a) containing non-responsive
 19 or non-relevant Protected Information, or (b) reflecting attorney-client privileged
 20 communications, protected attorney work product, or other information protected by legally
 21 recognized privileges (collectively, "Privileged Material"), may be inadvertently disclosed to
 22 another Party during the course of this litigation.

23 11. **Non-Waiver by Inadvertent Disclosure.** The Parties hereby agree that the
 24 inadvertent disclosure of any ESI or other document containing Protected Information or
 25 Privileged Material shall not waive any privilege or other applicable protective doctrine for that
 26 ESI or other document containing Protected Information or Privileged Material, or for the subject

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1 matter of the inadvertently disclosed ESI or other document containing Protected Information or
 2 Privileged Material. Any such disclosure shall be deemed inadvertent unless an express written
 3 waiver of privilege is given by the producing Party.

4 **12. Notification of Inadvertent Disclosure.** If ESI or other document containing
 5 Protected Information or Privileged Material is inadvertently produced in discovery, the Party
 6 making the claim of privilege or protection (“Producing Party”) must notify any Party that
 7 received the information (“Receiving Party”) of the specific ESI or other documents in question,
 8 the claim of privilege or protection, and the basis for it.

9 **13. Return of Privileged Material or Protected Information.** After being notified
 10 of the Producing Party’s claim of privilege or protection, the Receiving Party shall
 11 (a) immediately (but no later than five (5) business days after receiving notice) return, delete,
 12 sequester, or destroy the specified ESI or other documents, along with any copies thereof
 13 (including electronic and otherwise), (b) not use or disclose the specified ESI or other documents
 14 until the claim is resolved, (c) take reasonable steps to retrieve the specified ESI or other
 15 documents, and any and all information found within it, if the Receiving Party disclosed it to
 16 third parties before being notified of the claim of privilege, (d) promptly disclose the names of
 17 any individuals who read or had access to the privileged or otherwise protected document; and
 18 (e) provide written verification that the privileged or protected documents, along with all known
 19 copies, have been returned, deleted, sequestered, or destroyed.

20 **14. Dispute Resolution.** The Parties reserve the right to contest any determination
 21 that a document is Privileged Material or otherwise protected from disclosure. Counsel shall
 22 attempt to resolve the dispute on an informal basis. If the informal process does not produce a
 23 mutually acceptable resolution of the dispute, any Party may apply to the Court for an order as to
 24 whether the contested document(s) should remain confidential under the Order. During the
 25 pendency of the motion, the confidential status of the Protected Information or Privileged
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Material shall continue. In connection with the motion, the burden of establishing confidentiality shall remain with the Party producing the information and claiming confidentiality.

15. **Upon Final Disposition.** At the conclusion of this action, whether the action be settled, otherwise resolved in full prior to trial, or tried on the merits, the obligations imposed by this Order shall remain in effect, and all copies of Protected Information shall be returned to the Producing Party upon request within 30 days, after which time, all copies of the Protected Information will be destroyed.

16. **Survival.** Except as specifically provided herein, the terms, conditions, and limitations of this Order shall survive the termination of the above-captioned litigation.

17. **Jurisdiction.** The Court shall continue to retain jurisdiction to enforce the terms of this Order.

Dated this 14th day of January, 2020.

FRANCIS & MAILMAN, P.C.

/s/ Joseph J. Gentilcore

Joseph J. Gentilcore, admitted *pro hac vice*
1600 Market St., Ste. 2510
Philadelphia, PA 19103
(215) 736-8600
Email: jgentilcore@consumerlawfirm.com

GREEN LAW FIRM

Christopher E. Green, WSBA No. 19410
225 106th Ave. NE
Bellevue, WA 98005
(206) 686-4558
Email: chris@myfaircredit.com

Attorneys for Plaintiff Seth McClanahan

Dated this 14th day of January, 2020.

STOEL RIVES LLP

/s/ J. Scott Pritchard

Timothy W. Snider, WSBA No. 39808
J. Scott Pritchard, WSBA No. 50761
Jenna M. Poligo, WSBA No. 54466
600 University Street, Suite 3600
Seattle, WA 98101
Phone: (206) 624-0900
Email: timothy.snider@stoel.com
Email: scott.pritchard@stoel.com
Email: jenna.poligo@stoel.com

*Attorneys for Defendant Foremost
Corporation of America*

II. ORDER

IT IS SO ORDERED.

DONE this 14th day of January, 2020.



ROBERT J. BRYAN
United States District Judge

STIPULATED TO AND PRESENTED BY:

STOEL RIVES LLP

/s/ J. Scott Pritchard

Timothy W. Snider, WSBA No. 39808

J. Scott Pritchard, WSBA No. 50761

Jenna M. Poligo, WSBA No. 54466

600 University Street, Suite 3600

Seattle, WA 98101

Phone: (206) 624-0900

Email: timothy.snider@stoel.com

Email: scott.pritchard@stoel.com

Email: jenna.poligo@stoel.com

Attorneys for Defendant Foremost Corporation of America

STIPULATED TO, APPROVED AS TO FORM AND CONTENT
BY, AND NOTICE OF PRESENTATION WAIVED BY:

FRANCIS & MAILMAN, P.C.

/s/ Joseph J. Gentilcore

Joseph J. Gentilcore, admitted *pro hac vice*

1600 Market St., Ste. 2510

Philadelphia, PA 19103

(215) 736-8600

GREEN LAW FIRM

Christopher E. Green, WSBA No. 19410

225 106th Ave. NE

Bellevue, WA 98005

(206) 686-4558

Attorneys for Plaintiff Seth McClanahan

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CERTIFICATE OF SERVICE - 1